

ADMINISTRATIVE MATERIALS "P"

MODEL SUBDIVISION ROADWAY LATECOMERS AGREEMENT

General

This model roadway latecomers agreement is intended to be used in situations where roadway improvements on County or privately maintained roads or easements are required to mitigate the expected impacts which are directly attributable to a proposed subdivision. The extension of roadway improvements are pursuant to 76-3-510, MCA and are required to protect the public health, safety and welfare of Lake County and its citizens. Such an agreement can also be made for utility extensions.

Return after recording to:

**LAKE COUNTY
LATECOMERS AGREEMENT**

THIS AGREEMENT is entered into as of the _____ day of _____, 20__, by and between the Lake County Board of County Commissioners, Party of the First Part and hereinafter referred to as COUNTY, and

("Name of DEVELOPER")

a _____
(Individual, Company or Corporation)

located at _____,
(Street Address/P.O. Box) (City, County, State, Zip Code)
Party of the Second Part and hereinafter referred to as DEVELOPER.

WITNESSETH:

THAT WHEREAS, the DEVELOPER is the owner and developer of a new subdivision known as _____
(Name of Subdivision)

located at _____, and
(Location of Subdivision)

WHEREAS, the COUNTY owns and maintains a public roadway system that serves properties within the unincorporated Lake County for the benefit of the public.

WHEREAS, the COUNTY has conditioned approval of the final plat of the subdivision, _____,
(Name of Subdivision)

upon the conditions as set forth in the preliminary Plat of the Subdivision and all its improvements being completed pursuant to the Conditional Approval set forth in "Exhibit A".

WHEREAS, the DEVELOPER has completed roadway improvements to the required standards on COUNTY (or privately) maintained roadway(s) or easement(s) pursuant to the Conditional Approval set forth in "Exhibit A" which will benefit properties in addition to those developed by the DEVELOPER.

WHEREAS, the COUNTY and DEVELOPER have identified certain properties that may eventually benefit from the roadway improvements set forth in "Exhibit B", and

WHEREAS, the DEVELOPER seeks reimbursement from properties that may eventually benefit from the roadway improvements as these properties are developed as set forth in Exhibit "C".

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Entitlement to Reimbursement. The COUNTY agrees that DEVELOPER has installed the roadway improvements to COUNTY (or other) standards for which the COUNTY'S existing policies entitle the DEVELOPER to seek reimbursement from future property developers who benefit from such facilities:

a. Roadway Improvements: _____

_____ Based on evidence and information submitted by DEVELOPER, the COUNTY agrees that the DEVELOPER shall be entitled to seek reimbursement for the facilities described above in the amount of _____ DOLLARS as set forth in Exhibit "C".

2. Identification of Properties. The parties agree that the properties identified on Exhibit "B," attached hereto and incorporated herein by reference, are those properties from which DEVELOPER is entitled to seek reimbursement for roadway improvements to COUNTY (or privately) maintained roadways or easements, and the reimbursement that DEVELOPER is entitled to seek is the amount set forth on Exhibit "C" with respect to each property.

3. COUNTY Effort to Collect. The COUNTY agrees that it shall exercise its best, good faith efforts to assist DEVELOPER in collecting reimbursement as set forth herein. The COUNTY will exercise its best, good faith efforts to decline to allow the properties described on Exhibit "B" to subdivide or develop for which DEVELOPER is entitled to seek reimbursement unless and until such properties have deposited with the COUNTY the appropriate amount of reimbursement, as described on Exhibit "C." Other than exercising its best, good faith efforts to obtain reimbursement from those properties identified on Exhibit "B," the COUNTY shall have no further obligation to reimburse DEVELOPER for the roadway improvements. The COUNTY shall not incur liability for any unauthorized development within the properties identified in "Exhibit B" and the COUNTY shall not be obligated to pay to DEVELOPER any amount of reimbursement as set forth therein until the COUNTY has actually collected such amount from the properties described on Exhibit "B." DEVELOPER acknowledges that the COUNTY has entered into this Agreement as an accommodation and as a convenience to DEVELOPER, and the COUNTY does not guaranty that any amount of reimbursement will be collected for DEVELOPER; nor will the COUNTY be liable if it fails, through negligence or otherwise, to collect from a particular property.

4. Payment to Developer. Within thirty (30) days of the COUNTY'S collection of reimbursement from one of the property owners described on Exhibit "B," the COUNTY shall remit such amount to the DEVELOPER, less a service charge equal to seven (7) percent of the amount collected (but in no event exceeding \$500.00) to defray the COUNTY'S costs of administering this Agreement.

5. Term; Incorporation of Policies. This Agreement shall be in effect for a period of fifteen (15) years, after which time it shall automatically terminate. DEVELOPER shall have no right to reimbursement from any properties described on Exhibit "B" after the termination of this Agreement; nor shall the COUNTY have any further obligation to monitor or identify properties that benefit after the termination of this Agreement.

6. Attorneys' Fees. In the event of any litigation to enforce or interpret the provisions of this Agreement, or to remedy a breach thereof, the prevailing party shall be entitled to reasonable attorneys' fees as fixed by the court.

7. Entire Agreement. This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter contained in this Agreement which are not fully expressed herein. The provisions of this Agreement may be waived, altered, amended or repealed in whole or in part only upon the written consent of all parties to this Agreement.

8. Governing Law. The construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Montana.

9. Forum. Any litigation to enforce or interpret the provisions of this Agreement or the parties' rights and liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the courts in the County of Flathead, Montana.

10. Successors in Interest. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estate, heirs, and legatees of each of the parties hereto.

11. Notices. All notices, requests, payments, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall either be delivered in writing personally or be sent by telegram or by regular or certified first-class mail, postage prepaid, deposited in the United States mail, and properly addressed to the party at his address set forth on the signature page of this Agreement, or at any other address that such party may designate by written notice to the other party.

IT IS ALSO AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS, TO WIT:

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year herein before written.

Dated: _____

DEVELOPER

By: _____

Address: _____

STATE OF MONTANA)
) ss.
County of _____)

On this ____ day of _____, 20 ____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this ____ day of _____, 20 ____.

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____

Dated: _____

LAKE COUNTY

By: _____
Chairperson

ATTEST:

County Clerk and Recorder